

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6741 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE K.R.VYAS

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

A.K.PATEL,PI

Versus

STATE OF GUJARAT

Appearance:

MR YN OZA for Petitioner

MR.SA Pandya,AGP for Respondent No. 1, 2

CORAM : MR.JUSTICE K.R.VYAS

Date of decision: 09/04/99

ORAL JUDGEMENT

1. The petitioner in this petition has challenged the order of compulsory retirement at Annexure A dated 19.12.1986 passed by the Director General of Police. The perusal of the impugned order reveals that the impugned order is passed by invoking the provisions of Rule 161(1)(aa)(i) of the Bombay Civil Services Rules.

2. In order to appreciate the grievance of the petitioner against the order of his premature retirement, it is necessary to briefly refer to his service record.

The petitioner joined the services of Police Department as Police Constable in the year 1951 and was promoted as Head Constable within four months. The petitioner was promoted as Police Sub Inspector in the year 1962 and was further promoted as Police Inspector on 6.6.1974. It is averred by the petitioner that in his entire service career, barring one incident, there are no adverse remarks communicated to him with regard to his integrity; that the adverse remarks have been communicated to him by the District Superintendent of Police, Kutch Mr.Kuldeep Sharma because the petitioner had refused to submit to the illegality and had insisted for a written order and for that, Mr.Sharma passed adverse remarks against the petitioner. It is, therefor, the grievance of the petitioner that adverse remarks were passed against the petitioner arbitrarily and in colourable exercise of power. It is further averred that the authorities have not considered confidential reports of 8 to 10 years of the petitioner while passing the order of compulsory retirement. The petitioner has pointed out that he has althroughout discharged his duties honestly and, therefore, it is difficult to understand as to how he can be retired by branding him either as inefficient or corrupt. It is further averred that the impugned order is passed without hearing the petitioner and, therefore, it is in violation of Article 14 of the Constitution of India.

3. Mr.C.B.Trivedi, Under Secretary to the Government of Gujarat, Home Department, has filed affidavit-in-reply in the present case. Along with the affidavit, a statement showing assessment of ten years Annual Confidential Reports prior to petitioner's premature retirement is annexed. The deponent, in the affidavit-in reply has pointed out that the petitioner has been prematurely retired on the assessment of his confidential reports of last 8 to 10 years i.e. from 1976 to 1986. It is the case of the respondents that the case of the petitioner was reviewed when he attained the age of 55 years in accordance with the provisions contained in Rule 161(1)(aa)(1)(i) of the B.C.S.R. and in accordance with the instructions contained in Government Circular dated 25.10.1963 and 2.11.1976. Para 2(d) of the Circular dated 25.10.1963 provides that in a case in which the authority concerned has reasonable cause to believe that the Government servant is lacking in integrity, it would be appropriate to consider him for premature retirement

irrespective of his ability or efficiency in work. According to the deponent, the petitioner's record of last ten years showed that he was communicated adverse remarks for two consecutive years of 1984-85 and 1985-86. Furthermore, it was also found that the petitioner's integrity was doubtful and some vigilance cases of corruption were pending against the petitioner and it was decided to retire the petitioner prematurely in public interest as retention of such a Government servant was harmful to the public interest. It is further stated by the deponent that the then District Superintendent of Police, Kutch had passed adverse remarks in the ACR of the petitioner for the year 1984-85 stating "doubtful integrity" on the basis of concrete details. The Reporting Officer had attached a detailed note also in this regard and the petitioner had not preferred any representation against the said adverse remarks.

4. Mr.Y.N.Oza, learned advocate appearing for the petitioner, after inviting my attention to the Statement of Assessment of last ten years ACRs of the petitioner, submitted that except the Confidential Reports of last three years i.e. for the years 1983-84, 1984-85 and 1985-86, the service of the petitioner is assessed as "Good" or "Average type of Officer" while for the year 1984-85, it is assessed as "An ordinary type and ineffective officer". Mr.Oza submitted that in overall consideration of the Annual Confidential Reports of last ten years, it can safely be concluded that the petitioner is "an average type of officer" and remarks of "average or ordinary" cannot be treated or taken as an adverse remarks. In view of this, Mr.Oza submitted that looking to the overall performance of the petitioner, he cannot be termed as a dead wood or worthless so as to require compulsory retirement. To substantiate this submission, reliance is placed on the decision of this Court in the case of D.G.Disouza Vs. Director General of Police, 1991(1)GLH (UJ) 10. Mr.Oza further submitted that the authorities are required to see the entire service record before passing the order of compulsory retirement. In the submission of Mr.Oza, the adverse remarks of last three years cannot be made the basis of passing the impugned order. Reliance is placed on the decisions of the Supreme Court in the cases of S.Ramchandra Raju Vs. State of Orissa, AIR 1995 SC 111; R.P.Malhotra Vs. Chief Commissioner of Income-tax, AIR 1990 SC 2055, HC Gargi Vs. State of Haryana (1986) 4SCC 158 and Girdharsinh Vs. Dy.Inspector General of Police, 29(2) GLR 1095. Lastly, Mr.Oza submitted that the power to retire a Government servant prematurely cannot be used as a shortcut to bypass regular departmental inquiry under Article 311(2)

of the Constitution. In support of this, Mr.Oza placed reliance on the decision of this Court in the case of J.M.Mehta Vs. State of Gujarat, 1991(1)GLH 361.

5. Mr.S.A.Pandya, learned AGP appearing for the respondents justified the impugned decision of the State Government by contending that since the integrity of the petitioner is doubtful, the impugned decision of compulsory retirement is taken in public interest. Mr.Pandya submitted that the impugned decision is taken after carefully considering the evidence and material on record and, therefore, the said decision of the authority is not open for judicial review.

6. In order to appreciate the contentions advanced on behalf of the parties, it is necessary to appreciate the law on this point. This Court, after considering various decisions of the Supreme Court, in a judgment rendered in the case of H.A.Mehta Vs. State of Gujarat, 1993(1)GLH 899, has explained the rationale behind rule 161(1)(aa) of the B.C.S.R. It was observed as under:-

"The power of premature retirement is constitutionally recognized power and it reflects one of the facts of the doctrine of pleasure incorporated in Article 310 of the Constitution of India. The safety valve of public interest is the most powerful and the strongest safeguard against any abuse or colourable exercise of power under this rule. This rule holds the balance between the rights of the individual government servant and the interest of the public. While minimum service is guaranteed to the Government Servant, the Government is given power to energise its machinery and make it more efficient by compulsorily retiring those who in its opinion should not be there in public interest. If the appropriate authority is satisfied on the basis of material before it that the continuance of a government servant is not in public interest, the courts should be loathe to interfere with such order only on the ground that the judge himself would not have reached such a decision based on the material on which the authority has reached the decision. It is undoubtedly true that exercise of such drastic power must receive sedulous checking as the basis for decision-making. The appropriate authority, not the court, makes the decision, but as put by Justice Krishna Iyer 'caveat is necessary to

avoid misuse'. Various considerations may weigh with the appropriate authority while exercising the power conferred under this rule. In some cases, the government may feel that a particular post may be more usefully held in public interest by an officer more competent than the one who is holding. In some cases, the officer who is holding the post is not inefficient but the appropriate authority may prefer to have more efficient officer or in certain key posts, public interest may require that a person of undoubted ability and integrity should be there. The government may also feel that the officer is a deadwood and it is in the public interest to chop off the same. Similarly, there may be some officers who may possess better initiative and higher standard of efficiency and if given chance, the work of the Government might show marked improvement. In such case, compulsory retirement of an officer who fulfils the conditions of R.161 is found to be in public interest. Similarly, there may be cases of officers who are corrupt or of doubtful integrity and who may be considered fit for compulsory retirement in public interest since they have almost reached the fag end of their career and their retirement would not cast any aspersion nor does it entail any civil consequences. Keeping various aspects in mind, the exercise and existence of power is to be judicially reviewed in the facts and circumstances of each case."

In the said judgment, it is observed that it is for the Court to consider the scope of power of judicial review. Are the courts justified in re-appreciating and reassessing evidence and material and in reaching conclusions different from those reached by the appropriate authority ? Should the courts delve deep into the service record and try to find out factors favourable to the employee by ignoring factors which are quite relevant and material to the foundation of public administration? Should the courts sit in appeal over the order or decision of the appropriate authority? Answers to all such questions are in negative and the jurisdiction and scope of judicial review is very limited. It is only in those cases where the court is satisfied that the exercise of power under this rule amounts to colourable exercise of power or is arbitrary or mala fide that the court can always strike down the order.

7. The Supreme Court, in the case of State of Orissa Vs. Ramchandra Das, 1996(5) SCC 331, was also required to consider the question of scope of judicial review in the matter of compulsory retirement. The Supreme Court has observed as under:-

"The record of the pending inquiry on conduct also would be material. Though minor penalty may be imposed on given facts and circumstances for the act of misconduct, nevertheless, it remains part of the record for overall consideration to retire a Government servant compulsorily. The object always is public interest. The material question is whether the entire record of service was considered or not ? It is not for the court/tribunal to see whether the decision of the Government to compulsorily retire the Government servant is justified or not. It is for the Government to consider the same and take a proper decision in that behalf. What would be relevant is whether upon that state of record, as a reasonable prudent man would reach that decision."

8. In the background of the above settled law in the matter of premature retirement, let us consider the case on hand. Admittedly, ACRs of the petitioner of ten years were considered by the concerned authority before passing the order of premature retirement. Over and above the said consideration, while considering the service record of the petitioner of last ten years, the authorities relied upon the adverse remarks communicated to the petitioner for two consecutive years i.e. for the years from 1984-85 and 1985-86 wherein the petitioner was branded as "an ordinary type and ineffective officer". Reading the affidavit of Shri Trivedi, Under Secretary, it is clear that the petitioner's integrity was doubted as some cases of corruption were pending against him and in fact the District Superintendent of Police, Kutch had passed adverse remarks of doubtful integrity of the petitioner in the ACR for the year 1984-85 on the basis of concrete details. The Reporting Officer had attached a detailed note also in this regard. Admittedly, the petitioner had not preferred any representation against the said adverse remarks. In substance, the authority had material against the petitioner in forming the subjective opinion while invoking powers under Rule 161 of the B.C.S.R. Once the State Government forms an opinion, with necessary material, not to retain the petitioner in public interest, the scope of the court for interference becomes very limited. In the instant case,

the Government has taken the impugned decision after considering service record of ten years and especially, when the last two years reports are definitely against the petitioner whereby the petitioner is branded as an "ordinary type and ineffective officer" and especially when certain corruption cases are pending against the petitioner, the petitioner is of doubtful integrity and, therefore, it cannot be contended on behalf of the petitioner that the impugned order is illegal and arbitrary. Once it is held that the Government is empowered and is entitled to compulsorily retire a Government servant in public interest, with a view to improve efficiency of the administration or to weed out the employees who are of doubtful integrity or are corrupt, it is not open for the petitioner to justify his challenge on any ground except on the ground that the order is passed in colourable exercise of power or is arbitrary or mala fide. In the instant case, except the bare allegations made by the petitioner against Shri Sharma, District Superintendent of Police, Kutch, there is no other material produced by the petitioner to enable this Court to hold that the impugned order is either mala fide or passed in colourable exercise of power. On the contrary, the facts clearly reveal that the petitioner has not made any representation against the last adverse remarks and has also not denied the initiation of corruption cases against him. In view of this, it is not possible for me either to re-appreciate or to reassess the evidence and material and to reach a conclusion different from that reached by the concerned authority. It is also not possible for me to dwelve deep into the service record and to point out the facts favourable to the petitioner by ignoring factors which are quite relevant and material to the foundation of public administration. It is also not possible for me to sit in appeal over the order or the decision of the concerned authority. In view of these facts, it is not possible for me to accept the submission of Mr.Oza that the petitioner is an average officer in view of the ACRs of the petitioner of last ten years and it is also not possible for me to accept the submission of Mr.Oza that on the basis of the said remarks, the petitioner cannot be termed as a 'deadwood' or 'worthless' so as to require compulsory retirement. The judgment cited by Mr.Oza in the case of D.G. Disouza (supra) will be of no assistance to him in the facts and circumstances of the present case.

9. In view of the fact that in the aforesaid decision, even after branding the petitioner in that case as an 'average officer', subsequently, on considering the

Annual Confidential Reports of three years, the concerned authority noticed improvement in initiative, resourcefulness, willingness to assume responsibilities, capacity to organise and in taking work from the subordinates. In the circumstances, the Division Bench took the view that the order of compulsory retirement of the petitioner in that case was arbitrary and unreasonable. Apart from that, in the said case, the integrity of the petitioner was not in doubt while in the present case, it is otherwise, as certain criminal cases under the provisions of Prevention of Corruption Act are in fact pending against the petitioner.

10. I quite agree with the submissions of the learned advocate for the petitioner Mr.Oza that the power to retire a Government servant prematurely cannot be used as a 'shortcut' to bypass regular departmental inquiry under Article 311(2) of the Constitution. There cannot be any dispute with respect to this principle laid down by this Court in the case of J.M.Mehta (supra). However, in the instant case, the petitioner has not been prematurely retired bypassing the regular departmental inquiry under Article 311(2) of the Constitution. In J.M.Mehta's case (supra), on the date of the impugned order, there was a recommendation to hold the departmental inquiry against him with respect to four charges and instead of proceeding further with the departmental inquiry, the impugned order of premature retirement was passed. That is not the case on hand as no such recommendation was made.

11. In view of this discussion, I see no merits in this petition. The petition fails and is dismissed. Rule discharged. Interim relief stands vacated. No order as to costs.

mhs/-